

\*\*E-Filed 12/12/05\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FLORA MARIE GIOVANNONI,  
Plaintiff,  
v.  
BIDNA & KEYS, A PROFESSIONAL LAW  
CORPORATION, et al.,  
Defendants.

Case Number C 05-01654 JF (HRL)

ORDER<sup>1</sup> RE MOTION FOR  
ATTORNEY FEES AND COSTS

[Docket No. 22]

On April 20, 2005, Plaintiff Flora Marie Giovannoni (“Giovannoni”) filed a complaint against Defendants Bidna & Keys, A Professional Law Corporation, Howard Michael Bidna, Richard David Keys, Harvey Michael Moore, and Angela Christine Dawson, alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.* On May 10, 2005, Giovannoni filed an amended complaint, following communications between Defendants and Plaintiff’s counsel. On June 6, 2005, Defendants served Giovannoni with their first Offer of Judgment, which Giovannoni rejected. On August 11, 2005, Defendants served Giovannoni with

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 their second Offer of Judgment, which Giovannoni accepted. On October 7, 2005, this Court  
2 entered judgment, awarding Giovannoni \$1,001.00 plus an amount to be determined by this  
3 Court for reasonable attorney fees and costs.

4 On October 21, 2005, Giovannoni filed the instant motion for attorney fees and costs.  
5 Giovannoni's counsel, Fred W. Schwinn ("Schwinn"), requests attorney fees in the amount of  
6 \$8,677.50 and costs and expenses in the amount of \$511.10. On November 17, 2005, the clerk  
7 of the court taxed costs in the amount of \$250.00. Accordingly, the Court considers only the  
8 request for attorney fees in the amount of \$8,677.50, which includes fees for hours worked by  
9 Schwinn and his student law clerk. Schwinn has submitted to the Court detailed billing records  
10 showing that he and his law clerk worked a total of 39.8 hours representing Giovannoni. He  
11 adjusted this figure down by 16.33% to 33.3 hours. Of these, 25.8 hours were performed by  
12 Schwinn, billed at a rate of \$300.00 per hour, and 7.5 hours were performed by his law clerk,  
13 billed at a rate of \$125.00 per hour. On November 3, 2005, Defendants filed opposition to  
14 Giovannoni's motion for attorney fees. On November 14, 2005, Giovannoni filed a reply.

15 Schwinn is an attorney experienced in representing plaintiffs in FDCPA cases. He  
16 acknowledges that Giovannoni's claims in the instant case were "not novel or difficult to  
17 resolve." However, he notes that his hours were increased by his "unyielding approach," in  
18 which he rejected Defendants' first offer of judgment. Schwinn also notes that prior to his  
19 across-the-board 16.33% reduction in hours, he "made a special effort to eliminate any attorney  
20 and staff time that might be duplicative of work done by others or might have been avoided by  
21 optimum economy."

22 Defendants oppose Giovannoni's motion for attorney fees and costs, claiming that it is  
23 unreasonable and requesting that the Court award no attorney fees or no more than \$1,000 in  
24 total fees and costs. They argue Schwinn unreasonably refused settlement offers and raised the  
25 amount he demanded for settlement. Further, they argue that Schwinn used the fact that the  
26 FDCPA contains attorney fee provisions "to threaten and obtain settlements in excess of any  
27 reasonable value of any benefit he provides to his client or the public in general." Opposition 2.  
28 Most concerning to the Court, Defendants allege that Giovannoni might not know anything about

1 what has happened in this case. They identify three facts supporting this allegation: (1) Schwinn  
2 was unable to tell how his client remembered what the letter at issue looked like when she  
3 opened it, (2) the First Amended Complaint alleged Giovannoni's residence on information and  
4 belief, and (3) as of the time the opposition was filed, the \$1,001 settlement check sent to  
5 Schwinn more than two months prior to the filing of the opposition had not been cashed.  
6 Schwinn's reply brief on behalf of Giovannoni contains no response to Defendants' allegations.

7 The Court is not prepared to resolve this matter without additional information  
8 concerning the circumstances of Schwinn's representation. Accordingly, the instant motion shall  
9 be set for hearing on February 3, 2007. Plaintiff shall appear in person or submit a declaration  
10 under penalty of perjury setting forth the extent of her knowledge of the instant proceedings.

11 IT IS SO ORDERED.

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13  
14 DATED: December 12, 2005

15  
16 /s/ electronic signature authorized  
17 JEREMY FOGEL  
18 United States District Judge  
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1 This Order has been served upon the following persons:

2 Harvey M. Moore hmoore@bidnakeys.com

3 Frederick William Schwinn cand\_cmecf@sjconsumerlaw.com,  
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